STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 25, 2007
v	No. 264584 Wayne Circuit Court
JULIAS HOLLEY, Defendant-Appellant.	LC No. 05-003549-01

Before: Zahra, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for interference with a crime report, MCL 750.483a(1)(b). He was sentenced to two years' probation for his conviction. We reverse and remand.

I Basic Facts and Proceedings

On March 7, 2005, around 12:00 a.m., defendant arrived at Peggy Gordon's house. He was inebriated and began arguing with Gordon. She asked him to leave, but defendant moved toward the back of the house. He then returned to the living room, continued to argue with Gordon, until he went into the kitchen and grabbed a knife.

Holding the knife, defendant allegedly stated, "I'll hurt you," to which Gordon replied, "No you won't." Gordon attempted to pick up the telephone to call the police, but defendant allegedly cut the phone cord. Defendant then stated, "that's not me and threw the knife back on the stool where the phone was sitting." Defendant eventually left the home. After he left, Gordon claims she changed the phone cord and called the police. Notably, Gordon testified that defendant never pointed the knife toward her, though she feared defendant was going to hurt her.

Gordon's ten-year old daughter, Brandy, testified that she was sleeping in the living room on the night in question when she awoke to her mother's screams and her sister crying. Brandy comforted her sister in the living room, and she watched defendant take a knife from the kitchen and place it on the dining room stool. At some point, Brandy heard defendant threaten to kill Gordon. Also, she testified that she was scared.

Defendant was charged with assault with a dangerous weapon, MCL 750.82, and interfering with a crime report, MCL 750.483a(1)(b). Following a bench trial, the trial court

acquitted defendant of assault with a dangerous weapon but convicted him of interfering with a crime report.

II Analysis

Defendant argues that MCL 750.483a(1)(b) requires proof beyond a reasonable doubt of a "crime committed or attempted," not merely, as the trial court found, that Gordon perceived that defendant had committed or attempted an assault with a dangerous weapon.

Statutory interpretation is a question of law reviewed de novo on appeal. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

MCL 750.483a(1)(b) provides that a person may not "prevent or attempt to prevent through the unlawful use of physical force another person from reporting a crime committed or attempted by another person."

"Statutory language should be construed reasonably, keeping in mind the purpose of the act." *People v Hock Shop*, 261 Mich App 521, 527-528; 681 NW2d 669 (2004). "The Legislature is presumed to be familiar with the rules of statutory construction, and when it is promulgating new laws it is presumed to be aware of the consequences of its use or omission of statutory language." *Hock Shop, supra* at 528. Legislative intent is discerned from the plain language of the statute. *People v Neal*, 266 Mich App 654, 698; 702 NW2d 696 (2005). A court may go beyond the words of the statute to ascertain legislative intent only if the statutory language is ambiguous. *People v Gatski*, 260 Mich App 360, 365; 677 NW2d 357 (2004).

After the bench trial, the trial court posed the following question in regard to MCL 750.483a(1)(b):

> if, in fact, [Gordon] only has to perceive a crime being committed and that is in her mind, it's enough that she perceived it, then that's enough for that charge to stand. If, in fact, it has to be an actual crime for that particular one to stand, then I would find that that doesn't stand.

The trial court allowed the parties to submit briefs addressing the above question. After considering the parties' arguments, the trial court agreed with the prosecution's claim that MCL 750.483a(1)(b) only requires the person reporting the crime to perceive that crime has been committed or attempted. The trial court held:

> From the perspective of [Gordon] here of what she did and why, I think that under those circumstances that the statute's purpose is met and that the defendant did, in fact, try to prevent her from reporting a crime or an attempted crime here. And, I recognize there might be, seem to be some contradiction there for me as a judge to say that, I find [defendant] not guilty [of assault with a dangerous weapon] but from [Gordon's] perspective I think that it's fairly indicated that the statute is intended to prevent that.

Initially, we agree with the prosecution that MCL 750.483a(1)(b) does not require a defendant be convicted of any crime to be guilty of interfering with the reporting of that crime.

Similar to the offense of using a firearm during the commission of a felony, MCL 750.227b, which refers to a person who "commits or attempts to commit a felony," MCL 750.483a(1)(b) refers to "a crime committed or attempted." And just as MCL 750.227b does not require the defendant be convicted of the underlying felony, so also does MCL 750.483a(1)(b) not require the defendant be convicted of the underlying crime. Further, as here, defendant's acquittal of the felonious assault charge does not entail that he did not commit a crime; rather, it only shows that the prosecution failed to prove the felonious assault charge beyond a reasonable doubt. *People v Ewing*, 435 Mich 443, 452; 458 NW2d 880 (1990).

However, we agree with defendant that MCL 750.483a(1)(b) requires proof beyond a reasonable doubt of "a crime committed or attempted." See *People v Burgess*, 419 Mich 305, 310; 353 NW2d 444 (1984) (A felony firearm conviction may not be had unless the defendant committed or attempted to commit a felony). It is unclear whether the trial court based defendant's conviction on a finding that a crime was committed or attemped, or based on the complainant's mere perception that a crime was committed or attempted. The records reflects that the trial court may have interpreted MCL 750.483a(1)(b) to permit a conviction based only the *perception* of the person reporting "a crime committed or attempted." This interpretation is erroneous as it reads the word perception into the plain language of the statute, *People v Spann*, 250 Mich App 527, 532; 655 NW2d 251 (2002), and reversal is required because this interpretation permits a conviction under MCL 750.483a(1)(b) based on proof less than beyond a reasonable doubt of "a crime committed or attempted."

Accordingly, because the trial court apparently interpreted MCL 750.483a(1)(b) to only require the complainant's perception that there was "a crime committed or attempted," the trial court's findings are insufficient to sustain the conviction. If the findings are insufficient, remand for additional findings is necessary. *People v Porter*, 169 Mich App 190, 193; 425 NW2d 514 (1988). On remand, we instruct the trial court to decide whether there was an actual "crime committed or attempted." The trial court may consider lesser-included crimes of an assault with a dangerous weapon to establish "a crime committed or attempted," under MCL 750.483a(1)(b). Further, similar to a felony-firearm offense, MCL 750.483a(1)(b) "does not require a scienter element, i.e., there is no need to show that the defendant intended to commit the underlying crime." *People v Nix*, 165 Mich App 501, 505; 419 NW2d 7 (1986).

We reverse and remand for further proceedings. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh